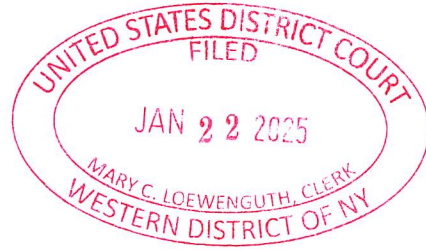


UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK



DARRELL LICHY,

Plaintiff,

v.

23-CV-1272 (JLS) (LGF)

COUNTY OF CATTARAUGUS,
TIMOTHY S. WHITCOMB, ERIC J.
KELLER, ERIC BUTLER, MARY
PENCE, CHELSEA SAULTER,
KRISTEN J. NODLER, TYLER
MC PHILOMY, DAMEN MACLEOD,
JASON THOMPSON, ADAM NUDD,
DERICK FRANZ, DEANNE
CROWLEY, DAVID ROSING, PHILIP
VIERECK, JANE DOE, and JOHN
DOES 1-10.

Defendants.

DECISION AND ORDER

Plaintiff Darrell Lichy commenced an action in Supreme Court, Cattaraugus County asserting claims against Defendants pursuant to 42 U.S.C. § 1983 and New York based on alleged denial of adequate medical treatment while Plaintiff was in the custody of New York State Department of Corrections and Community Supervision (“DOCCS”). *See* Dkt. 1-1 at 22-61.¹ Defendants removed the action to this Court on December 5, 2023. Dkt. 1. The case has been referred to United States Magistrate Leslie G. Foschio for all proceedings under 28 U.S.C. §§ 636(b)(1)(A), (B), and (C). Dkt. 6.

¹ Page references refer to CM/ECF stamped numbering in the header of each page.

Defendants moved to dismiss. Dkt. 5. Plaintiff responded in opposition and cross-moved to amend the Complaint. Dkt. 10-11. Defendants opposed Plaintiff's motion and replied as to their own motion. Dkt. 15. Plaintiff replied. Dkt. 18.

On August 8, 2024, Judge Foschio issued a combined Report and Recommendation and Decision and Order ("R&R"). Dkt. 19. The R&R recommends that this Court grant in part and deny in part Defendants' [5] motion to dismiss. *Id.* at 60. It further denied Plaintiff's [10] motion to amend without prejudice. *Id.* As such, the R&R recommends that this Court dismiss all of Plaintiff's claims without prejudice and with leave to file an amended complaint.²

Plaintiff objected to the R&R. Dkt. 24. Specifically, he argues that the R&R erred in: (1) its conclusions as to Plaintiff's deliberate indifference claims against Mcphilomy, Macleod, Thompson, Nudd, Franz, Pence, Saulter, and Jane Doe; (2) concluding that four incidents at the Cattaraugus County Jail were insufficient to establish *Monell* liability; and (3) recommending dismissal of Plaintiff's failure to intervene claim. *See id.* at 16-24. Defendants opposed the objections. Dkt. 26.

A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). A district court must conduct a *de novo* review of those portions of a magistrate judge's recommendation to which a party objects. *See* 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b)(3). But neither 28 U.S.C. § 636 nor Federal Rule of Civil Procedure 72

² The R&R recommends that this Court refrain from exercising supplemental jurisdiction over any remaining state law claims. *See id.* at 60n.24.

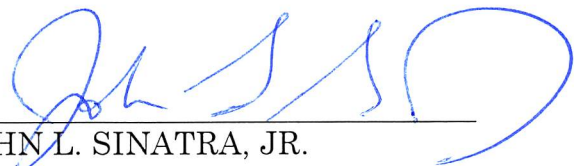
requires a district court to review the recommendation of a magistrate judge to which no objections are raised. *See Thomas v. Arn*, 474 U.S. 140, 149–50 (1985).

This Court carefully reviewed the R&R, the objections, and the relevant record. Based on its *de novo* review, the Court accepts and adopts Judge Foschio's recommendations. As such, Defendants' [5] motion to dismiss is GRANTED in part and DENIED in part as detailed in the R&R.³ All of Plaintiff's claims are DISMISSED with leave to file an amended complaint. The R&R is otherwise AFFIRMED.

The case is referred back to Judge Foschio consistent with the [6] referral order.

SO ORDERED.

Dated: January 22, 2025
Buffalo, New York



JOHN L. SINATRA, JR.
UNITED STATES DISTRICT JUDGE

³ The Court declines to exercise supplemental jurisdiction over any remaining state law claims.